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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,505	11/28/2001	Raymond J. Wong	3192-002	2941

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EXAMINER

MENON, KRISHNAN S

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

2

Advisory Action	Application No. 09/996,505	Applicant(s) WONG, RAYMOND J.	
	Examiner Krishnan S Menon	Art Unit 1723	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 04 May 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-11, 13-38 and 50-61.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Response to Arguments

Applicant's arguments filed 5/4/04 have been fully considered but they are not persuasive.

The following is a brief response to applicant's arguments:

1. Argument that the Polak ref does not teach or suggest layered structure with SZC: If Polak suggested SZC in layered structure, it would have been a 102(b) reference for claim 1. Secondary ref to REDY cartridge was relied upon for the layered structure.

2. Argument that one skilled in the art would conclude that SZC can only be used in combination with MGP from Polak ref: In response, Polak teaches that "Such application operates as a replacement for zirconium phosphate (ZP), or its progeny. Preferably, it is employed with a phosphate ion adsorber, e.g., the state-of-the-art sodium zirconium carbonate product of the formula ...", which, to the contrary, would make one of ordinary skill in the art think about using SZC with ZrP.

3. How the REDY cartridge can be combinable with Ploak et al is not seen ... examiner is using improper hindsight: this is clearly shown in the rejection.

4. One would not be motivated to replace HZO with SZC: It is made very clear in the rejection of claim 2.

5. Arguments re the dependent claims: Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Arguments are not linked to the

Art Unit: 1723

rejection of any specific claims. However, examiner assumes that these are about rejection of claims such as 5 and 6. Claims 5, for example, recites molecular compositions of ZrP, which would be known to one of ordinary skill in the art, unless applicant can show that the applicant has invented a new and previously unknown molecular formula for ZrP. Claim 6 recites a characteristic of ZrP, which is a material property inherent in the material, and unless applicant has invented a new material called ZrP, this would be known to one of ordinary skill in the art.

6. Position of activated carbon in claim 16: Position of the activated carbon layer in the cartridge, by applicant's own admission, can be anywhere, and therefore, any position would be equivalent to any other position. Merely shuffling the positions of the parts (layers) to produce a new product, when there is no particular advantage, would not be patentable over the prior art. See *In re In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955), *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950), and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

7. Composition of the cartridge in claims – 29-31: amounts of the ingredients in the cartridge is optimizable by one of ordinary skill in the art.

8. Formula for the SZC in Polak ref not the same as that of the applicant's invention: applicant has not shown how this would not be covered by the formulation of claim 19 to overcome the rejection.

9. Argument that the Polak, Potts and the REDY cartridge do not belong to similar fields of endeavor: This argument was already addressed in the previous action.

Art Unit: 1723

10. Marantz and Polak ref not combinable: Polak teaching away from Marantz is not a relevant argument because (1) Marantz ref is used for the distributor and filter pads, (2) Polak does not teach away from ZrP; it only teaches a new compound as a substitute for ZrP. Re the relative ages of the references, ages of the references are not a reason of non-obviousness.

Rest of the arguments are repetition from applicants' previous responses, and were addressed in the previous office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Krishnan Menon
Patent Examiner


W. L. WALKER
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